"proportionately" and are satisfied that it is not its natural meaning or that which it bears in this proviso.

Their Lordships are satisfied that the landlords' construction of the rent clause is correct from which it follows that Dr. Bannerji was not entitled to exercise his option for a renewal of the term as he had failed to pay the correct rent for a period of three years immediately before he purported to exercise the option and thus had failed to fulfil the terms of clause 3(c) of the lease.

Although the point was not taken with any clarity in the respondent's case their Lordships heard a submission on behalf of Dr. Bannerji that the landlords were estopped from relying upon the failure of Dr. Bannerji to pay the increased rent.

The basis of this submission was that the landlords had taken no action to enforce payment of the increased rent between the date when they first demanded it in March 1974 and the date upon which Dr. Bannerji purported to exercise his option in April 1977. Their Lordships are satisfied that the fact that the landlords did not take steps to enforce their legal right to payment of the increased rent cannot amount to an estoppel in the circumstances of this case. At all times Dr. Bannerji knew that the landlords contended that the correct rent was $240 a month and he knew that they were refusing to accept his cheques for the lesser amount. In these circumstances it is quite impossible to spell out any promise on the part of the landlords that they would not insist upon the payment of the correct rent as a condition precedent to the exercise of the option as required by clause 3(c) of the lease. It would not appear that this point was taken in either of the lower courts and their Lordships are satisfied there is no substance in it.

For these reasons their Lordships allowed the appeal, restored the order of Mr. Justice Chua and directed the respondent to pay the appellant's costs here and in the courts below.

Appeal allowed.

Solicitors: *Denton Hall & Burgin; Collyer-Bristow.*

SINGAPORE REPORTS

JUSUF KALIMAN & ANOR. v. OUTRAM REALTY (PTE.) LTD.

[O.C.J. (Wee Chong Jin C.J.), June 18, 1984]

[Singapore – Summons in Chambers No. 2699/82 in Suit No. 1082 of 1982]

Contract – Agreement for sale and purchase of land – Housing developers failing to give Notice to complete on appointed date – Claim by purchasers for liquidated damages – Claim allowed despite waiver by purchasers – Housing Developers' (Control and Licensing) Act 1965 – Housing Developers Rules 1965, r.16 – R.S.C. 1970, O.81.

Housing Developers – Failure to give Notice to complete on appointed date – Claim by purchasers for liquidated damages – Claim allowed despite waiver by purchasers – Housing Developers (Control and Licensing) Act 1965 – Housing Developers Rules 1965 r. 16.

The defendants failed to give Notice of Completion on December 31, 1976 which was the date appointed by the Controller of Housing on or before which the notice to complete should be given by the Vendor under Clause 12 of the sale agreements. The defendants gave notice to complete the sale and purchase on March 11, 1981. Pursuant to the said Clause the plaintiffs claimed against the defendants the sum of $130,351.50 as liquidated damages. The defendants contended that the plaintiffs had expressly waived their right to liquidated damages in writing and by taking possession of the properties.

Held, allowing the plaintiffs' claim: there is no defence or no fairly arguable point to argue on behalf of the defendants.

[**Editorial Note**: The defendants appealed against this judgment and were given leave to defend – Civil Appeal No. 8 of 1984. No grounds of decision were given.]

SUMMONS IN CHAMBERS.

Dennis Tan Jui Kwang for the plaintiffs.
Lee Kim Siang for the defendants.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The plaintiffs, in an Order 81 application, claim, *inter alia*, the sum of $130,351.50 as liquidated damages as specified in two contracts of sale of two shop units 65 and 67 situated on the ground floor of Pearl Centre. The plaintiffs are the purchasers and the defendants are the vendors of these two shop units. The relevant clause of the sale agreements is Clause 12 which reads:–

"12. The sale and purchase shall be completed at the Office of the Vendor's Solicitors M/s. Lee Kim Siang & Co. of

No. 17-B, Upper Circular Road, Singapore 1, fourteen (14) days after the receipt by the Purchaser or his Solicitors of the Notice to Complete of the Vendor or its Solicitors such Notice to be accompanied by the certificate of the Vendor's Architect that the said premises and road drainage and sewerage works have been completed in accordance with the relevant approved plans and that sewerage water and electricity and/or gas services have been duly connected to the said Premises and that the said approval of the Competent Authority for separate disposal has been obtained, and, after receipt by the Purchaser or his Solicitors of the notice from the Vendor's Solicitors that the Subsidiary Strata Certificate or Title has been issued for the said Premises. The said Notice to Completion shall be given by the Vendor on or before December 31, 1976 or such other subsequent date or dates as may after the date hereof be appointed by the Controller of Housing. If the Vendor shall fail to give the said Notice to Complete on the appointed date the Vendor shall pay to the Purchaser liquidated damages calculated from day to day in respect of the period commencing from the appointed date up to the date when the said Notice to Complete shall have actually been given at the rate of nine per centum (9%) per annum on the purchase price such interest to be paid and deducted from the balance of the purchase price payable on completion. On completion, the Vendor shall make and execute to the Purchaser a transfer of the said Premises sold, such transfer to be prepared by and at the expense of the Purchaser."

The defendants contend that the plaintiffs have expressly waived their right to liquidated damages. They rely on the fact that the plaintiffs had taken possession of the shop units on March 19, 1977 and on a document dated March 19, 1977 alleged to be executed by the plaintiffs which, so far as relevant reads:—

"Re: UNDERTAKING AND INDEMNITY
Unit/Units G5 & G7
Pearls Centre

In consideration of M/s. Outram Realty Pte. Ltd. (hereinafter referred to as "the Company") agreeing at my/our request to give me/us vacant possession of the above property, without their having obtained the Temporary Occupation Licence/Certificate of Fitness for Occupation in respect thereof, I/We do hereby freely and without coercion agree and undertake the following –

... ...

13. In consideration of my/our taking over the above unit/units to-day, I/We am/are fully aware of my/our rights as per clause 12/14(2) of the sales agreement and I/We on my/our own free will do hereby waive my/our rights in the aforesaid clause 12/14(2)."

The plaintiffs' answer to this contention is Rule 16 of the Housing Developers Rules 1965 made under the Housing Developers (Control and Licensing) Act 1965 which reads:—

"16. – (1) A housing developer shall not, without the prior consent in writing of the Controller, seek from a purchaser –

(a) any waiver of the purchaser's rights under an agreement for sale of any housing accommodation sold by the housing developer; or

(b) any release from the performance of the housing developer's duties and obligations under the aforesaid agreement.

(2) Any undertaking given by a purchaser of any housing accommodation to a housing developer which seeks to waive the purchaser's rights or claims against the housing developer for a breach of, or to release a housing developer from the performance of the housing developer's duties and obligations under, an agreement for the sale of any housing accommodation by the housing developer shall be unenforceable unless the prior consent in writing of the Controller has been obtained therefor."

It is undisputed that the defendants failed to give notice of completion on December 31, 1976 which was the date appointed by the Controller of Housing on or before which the notice to complete should be given by the Vendor under Clause 12 of the sale agreements. The defendants gave notice to complete the sale and purchase on March 11, 1981.

I am satisfied that on these facts that there is no defence or no fairly arguable point to argue on behalf of the defendants and that the plaintiffs are entitled to enter judgment for the sum claimed.

Judgment for the plaintiffs.

Solicitors: *Chor Pee & Co.; Lee Kim Siang & Co.*

TOMINAM BTE. TUKIMIN v. TOH KAI CHUP

[O.C.J. (Chua J.) April 9, 1985]

[Singapore – Civil Suit No. 4574 of 1981]

Damages – Road accident – Brain injury – Epilepsy – Quantum of damages – No award of interest allowed – Civil Law Act (Cap. 30), s.9.

Road Traffic – Collision with motorcyclist – Pedestrian at fault.

The plaintiff, a factory operator aged 25 years old met with an accident, as a result of which she suffered the following injuries: Brain injury, epilepsy and residuals.

The court found that the accident was caused solely by the negligence of the plaintiff. However, the court dealt with the question of the quantum for "completeness as much argument had been addressed to the court by both parties".